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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 49

THE UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, etc.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 18) has not been reported. The opinion of the Circuit Court of Appeals (R. 58–61) is reported in 44 F. (2d) 951.

JURISDICTION

The decree of the Circuit Court of Appeals was entered November 17, 1930. (R. 61.) On February 16, 1931, the time for filing a petition for certiorari was, upon application of the Government, extended for a period of sixty days from that date.

The petition for certiorari was filed April 17, 1931, and was granted May 25, 1931. (R. 63.) Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The principal question presented is whether Section 3453 of the Revised Statutes provides for the forfeiture of all personal property found in a place where articles subject to tax are possessed for the purpose of being *sold or removed* in fraud of the internal revenue laws or with design to avoid payment of such tax, or whether that statute provides for the forfeiture of only such personal property as is found in a place where articles subject to tax are *manufactured* for such fraudulent purpose or with design to avoid payment of tax.

Other questions raised by the assignment of errors filed in the court below (R. 46–49) are whether Section 3453 was impliedly repealed by Sections 22 and 25, Title II, of the National Prohibition Act, and whether a libel for forfeiture under Section 3453 is barred by the institution of criminal proceedings under the National Prohibition Act against the person in whose possession the property libeled was found.

STATUTES INVOLVED

These are set forth in the appendix to this brief, pp. 25–30, *infra*.

STATEMENT.

On March 21, 1930, a libel was filed by the United States in the District Court for the District of Montana praying the forfeiture of a bar, back bar, and other saloon furnishings and equipment, alleged to have been seized by Federal prohibition agents in a soft-drink parlor operated by one George Lewis, in Butte, Montana, and to be then held by the Federal Prohibition Administrator within that district. (R. 1–3.) The libel averred that at the time of the seizure—

> the defendant George Lewis * * * within the premises hereinabove described, did then and there * * * have in his possession and * * * control certain goods, * * * to wit, whiskey, beer, and gin, a more particular description of which is to your informant unknown, * * * which said intoxicating liquors were goods and commodities for and in respect whereof a tax was then and there due and unpaid, which said intoxicating liquors were then and there in the possession, custody, and control of said defendant for the purpose of being sold or removed by him in fraud of the internal-revenue laws of the United States of America and with the design to avoid the payment of said taxes * * *.

Ryan, the respondent here, appeared as claimant and filed an answer in which he asserted that the property libeled had been seized upon a search warrant issued under the National Prohibition

Act; that in the execution of the warrant certain whiskey, beer, and gin, as well as the containers thereof, had been seized as authorized by the National Prohibition Act; that in addition thereto the officers executing said warrant, acting in excess of the powers conferred upon them by the National Prohibition Act and by the warrant, seized the property described in the libel; that none of the libeled property was designed for the manufacture of intoxicating liquor or intended for use in violating the National Prohibition Act and that at the time of its seizure the claimant was, and still is, the owner of such property and entitled to the immediate possession thereof. The answer denied that any part of the libeled property was subject to forfeiture for any violation of the internal revenue laws. (R. 9–15.)

Issue was joined on these pleadings. The evidence for the libelant clearly established that on February 24, 1930, the date of the seizure, tax-unpaid liquor was held for sale and was being sold by the libelee, George Lewis, on the premises where the libeled property was seized (R. 24–26), and that the libeled property was seized in the room occupied by Lewis for the sale of the liquor and was used by Lewis as ancillary to such sale (R. 27–32).

The claimant introduced in evidence the record of criminal proceedings against George Lewis showing that the latter had been indicted for the pos-

session of intoxicating liquor and the maintenance of a common nuisance in violation of the National Prohibition Act on the premises in question on February 24, 1930, when the property libeled was seized, and that upon being called for arraignment, Lewis had failed to appear. (R. 32, 36–37.) The claimant testified that he was the owner of the libeled property at the time it was seized; that he was not the owner of the premises and had no interest therein, and that Lewis had rented the furniture from the witness. (R. 40–41.)

Both sides having moved for a directed verdict at the close of all the testimony, counsel, at the suggestion of the court, entered into an agreement pursuant to which the jury was dismissed and the issues left for the determination of the court. (R. 42–43.) The District Court held (1) that Section 3453 of the Revised Statutes provides for the forfeiture of all personal property in any building or inclosure where articles subject to an internal revenue tax are possessed for the purpose of being sold with design to avoid payment of the tax, and (2) that there was no such direct conflict between Section 3453 of the Revised Statutes and Sections 22 and 25 of the National Prohibition Act as to effect an implied repeal of Section 3453. (R. 18–20.) A decree for the libelant was accordingly entered. (R. 22–23.)

Upon appeal the decree was reversed by the Circuit Court of Appeals (R. 58–61) on the sole ground that the District Court erred in construing Section

3453 as providing for the forfeiture of all personal property found in a place where articles subject to tax are possessed for the purpose of being *sold* with design to avoid payment of such tax, the appellate court holding that, except for articles subject to tax and raw materials intended to be manufactured into such articles, the only personal property which is forfeitable under Section 3453 is that found in a place where articles subject to tax are *manufactured*. This Court thereafter granted the Government's petition for a writ of certiorari. (R. 63.)

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that Section 3453 of the Revised Statutes does not provide for a forfeiture of personal property, other than articles subject to tax, which is found in a place where articles subject to tax are possessed for the purpose of being sold or removed in fraud of the internal revenue laws, or with design to avoid payment of such tax.

SUMMARY OF ARGUMENT

Section 3453 of the Revised Statutes plainly authorizes the forfeiture of property found in a place where taxable articles are possessed for the purpose of being *sold* or *removed* in fraud of the internal revenue laws. As the articles libeled in this case were found in such a place they were subject to forfeiture, as decreed by the District Court. The decision of the Circuit Court of Appeals that,

except for articles subject to tax and raw materials intended to be manufactured into such articles, the only personal property which is subject to forfeiture under Section 3453 is that found in a place where articles subject to tax are *manufactured* with intent to evade payment of such taxes, disregards the plain meaning of the language of the statute, is opposed to the intent of Congress as evidenced by the legislative history of the statute, and is contrary to an almost unbroken line of judicial decisions extending over a period of fifty years. It seems to stand alone except for a decision by the District Court for the Western District of New York which runs counter to a decision of the Circuit Court of Appeals for the same circuit subsequently rendered.

The libel for forfeiture was not barred by the institution of a prosecution under the National Prohibition Act against the person found in possession of the property libeled. The right of the Government to proceed against property declared forfeited by statute, regardless of any prosecution which may have been brought against the person in whose possession it was found, is settled by the recent decision of this Court in *Various Items of Personal Property et al. v. United States*, 282 U. S. 577.

Section 3453 was not impliedly repealed by Sections 22 and 25, Title II, of the National Prohibition Act. Section 3453 was designed to enforce payment of taxes, whereas Sections 22 and 25 were

intended to prevent the manufacture and use of beverage liquor. That both laws embrace parts of the same transactions does not establish direct conflict between them.

ARGUMENT

I

THE CIRCUIT COURT OF APPEALS ERRED IN ITS CONSTRUCTION OF SECTION 3453 OF THE REVISED STATUTES

Section 3453 of the Revised Statutes (*infra*, p. 27) provides for the forfeiture of three classes of property, viz:

> (1) *All* goods, wares, merchandise, *articles*, or objects, *on which taxes are imposed*, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes;
>
> (2) All *raw materials* found in the possession of any person intending to manufacture the same into *articles of a kind subject to tax* for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and
>
> (3) All tools, implements, instruments, and personal property whatsoever, in the place or building or within any yard or inclosure where *such articles* or *raw materials* are found. (Italics ours.)

The Government contends that the property libeled in the instant case clearly falls within the third class. This conclusion is quite obvious if,

as held by the District Court, the words "such articles," in the third clause above set forth, refer to the articles mentioned in the first clause, *i. e.*, taxed articles found in possession of a person for the purpose of being *sold* or *removed* in fraud of the internal revenue laws. But the Circuit Court of Appeals treated the words "such articles," in the third clause, as referring only to the "articles" mentioned in the second clause, and held that the articles contemplated by the second clause were only those held for the purpose of *manufacture*. That court accordingly held that since the personal property sought to be forfeited in the instant case was not found in a place with raw materials intended to be manufactured into articles subject to tax, such property was not forfeitable. We submit that this construction of the statute is erroneous.

Section 3453 was a reenactment of Section 9 of the Act of July 13, 1866, c, 184, 14 Stat. 98, 111, amending Section 48 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 240. Both the Act of 1864 and the Act of 1866 described the first of the classes of forfeitable property alike, as follows:

> all goods, wares, merchandise, articles, or objects on which duties ["taxes," in the Act of 1866] are imposed, etc.

The Act of 1864 described the second class:

> and also all articles of raw materials found in the possession of any person or persons intending to manufacture the same for the

purpose of being sold by them in fraud of said laws or with design to evade the payment of said duties.

The Act of 1866 described the second class:

and also all raw materials found in the possession of any person or persons intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulent[ly] selling such manufactured articles, or with design to evade the payment of said tax.

The Act of 1864 described the third class:

and also all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles on which duties are imposed, as aforesaid, *and intended to be used by them in the fraudulent manufacture of such raw materials* shall be found. (Italics ours.)

This language is confused and ambiguous and lends some support to the contention that *under the 1864 Act* only that property was forfeitable which was found in a place (1) where articles subject to tax were found, *and* (2) which was intended to be used in the fraudulent manufacture of raw materials. But since the "articles" described in the third clause are identical with those described in the first clause (i. e., "articles on which duties are imposed, as aforesaid") there would seem to be good ground for holding that Congress intended to make forfeitable not only property found with raw

materials for manufacture but also property found with taxable articles intended to be sold or removed in fraud of the revenue laws.

The Act of 1866, in describing the third class, followed the language of the earlier Act down to and including the word "articles" and omitted the words "on which duties are imposed, as aforesaid, and intended to be used by them in the fraudulent manufacture of such raw materials," substituting the words "or such raw materials." The present statute is substantially the same.

There is nothing to indicate that the change made in 1866 was meant to accomplish more than a clarification of language and the removal of the limitation on the forfeiture of personal property found with raw materials to personal property intended to be used in their manufacture. The later revision divides by a period the single sentence found in the earlier Acts; but all three clauses are joined by conjunctions now as they were then.

It may be added, with reference to the phrase "articles or raw materials" occurring in the present statute relating to the third class of forfeitable property, that the second clause does not include in its description "articles" at all, but only raw materials intended to be manufactured into articles subject to tax for the purpose of fraudulently selling them. In other words, the only thing forfeitable under the second clause is the raw material. The word "articles" in the third clause has no counterpart in the second in the form of articles in

existence, and can be given effect only by relating it to the same description that is found in the first clause and nowhere else.

The purpose and effect of this legislation was explained by District Judge Blatchford in *United States* v. *Quantity of Tobacco,* Fed. Cas. No. 16106 (decided in 1872), as follows (p. 654):

> A reading of the 48th section, giving the usual accepted meaning to the words found therein, seems to me to lead conclusively to the view that congress intended to forfeit taxable articles, when held, especially by their manufacturer, *for the purpose of being sold or removed in fraud of the revenue laws,* or with design to avoid the payment of the taxes which would accrue thereon by reason of such sale or removal, and also to forfeit all raw materials when held by a person intending to manufacture them into taxable articles for the purpose of fraudulently selling such articles, or with design to evade the payment of the taxes which would accrue thereon when sold or removed, and also to forfeit *all personal property found in the place where any such articles,* or any such raw materials, are found; and that possession, with the specified purpose, design, or intent, is all that is necessary to work the forfeiture. * * *
>
> * * * The section was amended by the act of July 13, 1866, to read as before recited, *being made more stringent as respected personal property, so as to cover all*

> *personal property found in the same place with either the articles or the raw materials and without reference to the intended use of such personal property.* (Italics ours.)

Similar views were expressed by the same judge in *Quantity of Distilled Spirits*, Fed. Cas. No. 11494, decided in 1868. With reference to a forfeiture sought under Section 48, as amended by the Act of 1866, he there said (p. 110):

> If these spirits, at the time of this seizure, on the 14th of February, 1868, were found on the place, in the possession or custody, or within the control, of any person or persons, for the purpose of being sold or removed by such person or persons in fraud of the internal revenue laws, or with design to avoid the payment of the tax, then, not only are the spirits forfeitable under this section, but also all tools, implements, instruments, and personal property whatsoever, in the place or building where the spirits were found.

And again (pp. 111–112):

> If there were any spirits there, which these parties purposed to sell or remove in fraud of the law, or with design to avoid the payment of the tax, the spirits and everything in the establishment, are forfeited.

See also *United States* v. *Eighteen Barrels High Wines*, Fed. Cas. No. 15033; *United States* v. *Thirty-six Barrels of High Wines*, Fed. Cas. No. 16468 (p. 70). Cf. *United States* v. *Thirty-three Barrels of Spirits*, Fed. Cas. No. 16470 (1868).

In *United States v. Sixteen Barrels of Distilled Spirits*, Fed. Cas. No. 16300 (1879), District Judge Choate held the statute, then Section 3453 of the Revised Statutes, to have the effect earlier given it by Judge Blatchford in the cases above cited. In that case it was said (pp. 1098–1099):

> The argument of the claimant is that the words "articles or raw materials" do not refer to the words "all goods, wares, merchandize, articles, or objects," but only to the words "all raw materials found in the possession of any person intending to manufacture the same into articles." But the proper antecedent of the words "such articles" is the words "all goods, wares, merchandize, articles, and objects." These things before enumerated are here described under the general term "articles." There is no other sensible construction of the language nor anything else to which the term "such articles" can be held to refer with any regard to the grammatical meaning of the words. The words refer to something before mentioned in the section and are called articles as being "found" in the place. They cannot refer, therefore, to "articles" which might be in the future manufactured out of the raw materials found in the place, but which are not now found there. "Such articles" cannot, therefore, mean the articles which it is intended to manufacture out of the raw materials. The construction given to the section in this respect is that which it has uniformly

received in this court and in the circuit court in this circuit.

See also *United States* v. *Quantity of Rags*, Fed. Cas. No. 16103.

In *United States* v. *One Ice Box*, 37 F. (2d) 120 (N. D. Ill.), decided January 8, 1930, the Government sought forfeiture under Section 3453 of an ice box, bar, and other equipment of a saloon, on the ground that intoxicating liquors had there been possessed for sale with intent to avoid payment of the tax thereon. The court decreed such forfeiture, and in its opinion said (p. 122):

> An analysis of the section discloses its comprehensiveness. It provides for the seizure and forfeiture under the conditions there stated of (1) the contraband goods; (2) all raw materials intended to be manufactured into contraband goods with intent to sell them in fraud of the revenue laws; and (3) "all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles or raw materials are found."
>
> Naturally and grammatically the words "articles" and "raw materials," respectively, as used in the third classification, refer to the contraband articles and contraband raw materials referred to in the first and second classifications. The plain and natural meaning of the language used is that

all personal property in the same place where the contraband articles are found is the subject of forfeiture.

Three days after the foregoing case was decided it was held in *In re Hurley*, 37 F. (2d) 397 (W. D. N. Y.), that Section 3453 permitted the forfeiture only of personal property (other than that upon which taxes are imposed) which is found in a place or building where *manufacturing* takes place. In the opinion in that case District Judge Adler said (pp. 399, 400):

> The form in which the statute was in 1864, which I have quoted, is unambiguous on the point under discussion. Under the 1864 statute there is no question that personal property could be seized only in the building where manufacturing was done. The words making that clear were taken out by the amendment of the section in 1866. It might be said that these words were taken out in order to change the meaning of the section and make the seizure of the personal property apply to any place where the nonpaid taxed article was found, and not only to the place where it was being manufactured. I am not convinced, however, that that was the reason why these words were taken out. With these words in, the meaning of this part of the section was confusing because as it read it seemed to say that the articles on which duties are imposed must be intended to be used in the fraudulent manufacture of raw materials. Of course, that was never intended, and in the very next session of

Congress the section was amended. It is evident that the amendment was made to clarify that point and not to change the clear intent which was evident before the amendment that seizure of personal property could be made only where manufacturing took place.

* * * * * *

As I construe the statute, the words "such articles," where they appear in the phrase "within any yard or inclosure where such articles or raw materials are found," refer back only to the word "articles" toward the beginning of the sentence where they occur, and to the words "such manufactured articles" which appear in the same sentence a little farther on. Under the construction I have adopted only such other personal property can be seized which is found in the place or building where manufacturing takes place.

In *United States* v. *Ten Bottles of Scotch Whiskey*, 48 F. (2d) 545, the Circuit Court of Appeals for the Second Circuit, after referring to most of the cases discussed in this brief, held that the forfeiture provided for by the third clause of Section 3453 was not confined to personal property found in a place where taxable articles were manufactured, but extended to property found in places where such articles were sold or removed. In this regard the court said (pp. 546, 547):

It appears to us that to construe the clause in question as limited to cases of man-

ufacture disregards the words "such articles," in the clause, "in the place or building, or within any yard or inclosure where such articles or raw materials are found." Except for the earlier form of this provision in the Act of 1864, there seems to be no room for doubt. The section begins by condemning all "articles" on which taxes are imposed. It extends this by the next sentence to "raw materials" intended for the manufacture of "articles of a kind subject to tax," and concludes by including the tools, etc., in the place "where such articles or raw materials" may be. The apparent purpose was to cover the associates of manufactured articles as well as of raw materials; nor is there any antecedent reason to impute any difference.

* * * Hence we hold that property is confiscable, when found in the same place or building as manufactured articles subject to tax.

The court declared, however, that the chattels must be in a part of the building occupied by the possessor of the illicit liquor, and, adding that such chattels must be "in a part associated in use with that where the liquors are possessed," it held the libel defective for failure to allege these facts with sufficient clarity. In reversing the decree of forfeiture with leave to the libelant to plead over, it reserved decision as to the necessity for showing that the chattels sought to be forfeited were in the

custody of the possessor of the liquor, and, if so, that they were being used as ancillary to the unlawful possession.

In the instant case it is clear that the property described in the libel was found in that part of the building which was occupied and used by the possessor of the liquor for the illegal sale thereof and that it was in the custody of such possessor and used by him as ancillary to the unlawful business. (R. 24–25, 26–32.) The only question involving the construction of Section 3453 which is presented, therefore, is whether that statute authorizes the forfeiture of property found in a place where taxable articles are sold in fraud of the internal revenue laws. The holding of the court below that the statute is not to be so construed seems to be supported only by the decision in *In re Hurley, supra,* which is opposed to the decision subsequently rendered by the circuit court of appeals for the same circuit in the *Ten Bottles of Scotch Whiskey case, supra,* and the other decisions herein cited.

No reason has been suggested why one rule of forfeiture should apply to property found with articles intended to be sold or removed in fraud of the revenue laws and another to property found with raw materials intended to be manufactured in fraud of the revenue laws, especially since the intended use of the property is not material. The purpose of the forfeiture is the same with respect to both, i. e., the protection of the revenues by pun-

ishing evasions. In the light of that purpose it is not to be presumed that Congress intended the forfeiture of only the tax-unpaid articles in the one case and in the other the forfeiture of not only the raw materials but of the property found with them as well.

We submit that the court below erred in holding that the property libeled in this case does not come within the forfeiture provisions of Section 3453.[1]

II

SECTION 3453 WAS NOT IMPLIEDLY REPEALED BY SECTIONS 22 AND 25, TITLE II, OF THE NATIONAL PROHIBITION ACT

So far as can be gathered from the respondent's argument in the court below that Section 3453 was impliedly repealed by Sections 22 and 25, Title II, of the National Prohibition Act, his contentions are: (1) That the provisions of Section 22, providing for the abatement of liquor nuisances and for the closing of premises upon which they are maintained are in direct conflict with those of Section 3453 providing for the forfeiture of personal property found in a place where liquor subject to tax is sold with the intent to avoid the payment of such tax, and (2) that the provisions of Section 25, authorizing the issuance of warrants to search

[1] Although the court below based its decision solely upon its construction of Section 3453, other questions presented by the assignment of errors filed in that court are discussed in Points II and III.

premises in which liquor is unlawfully possessed and prescribing what may be seized and what disposition shall be made of the things seized, are also in direct conflict with the forfeiture provisions of Section 3453.

These contentions are plainly without merit. In *United States* v. *One Ford Coupe*, 272 U. S. 321, 332–333, this Court said:

> That since the Willis-Campbell Act, Congress has not intended to restrict any remedy theretofore given in aid of the revenue laws is clear.

The statutes alleged to be in direct conflict were enacted for different purposes and occupy different fields of governmental concern. Section 3453 was designed to enforce the payment of taxes on articles subject to tax. Sections 22 and 25, on the other hand, were intended to prevent the manufacture, transportation, and sale of beverage liquor. Under Section 3453 it is an essential element of the acts therein proscribed that they be committed with intent to defraud the internal revenue laws or to avoid payment of a tax. No such intent is involved in the offenses dealt with by Sections 22 and 25. That parts of the same transaction fall within the purview of both laws does not establish direct conflict between them. *United States* v. *One Ford Coupé*, *supra*, pp. 330, 331.

III

THE PROSECUTION OF THE PROPRIETOR UNDER THE NATIONAL PROHIBITION ACT DID NOT PRECLUDE FORFEITURE OF THE LIBELED PROPERTY UNDER SECTION 3453.

The respondent's contention that prosecution of the proprietor of the premises upon which the libeled property was seized, under the National Prohibition Act, precludes forfeiture under Section 3453 is apparently based upon *Commercial Credit Co.* v. *United States*, 276 U. S. 226, and *Richbourg Motor Co.* v. *United States*, 281 U. S. 528. In the first of these cases it was held that where the person in charge of an automobile found transporting liquor in violation of the National Prohibition Act has been convicted of such illegal transportation, Section 26, Title II, of that Act provides the exclusive mode for forfeiting the vehicle. In the second case it was held that an automobile seized while transporting liquor in violation of the National Prohibition Act may not be forfeited under Section 3450 of the Revised Statutes because the provisions of Section 26 are mandatory and require the Government to proceed for the forfeiture under that section. Section 26 only deals with proceedings after discovery of persons in the act of unlawful transportation of intoxicating liquors, and, so far as it refers to proceedings *in rem*, concerns only the liquor transported and

the transporting vehicle. It can have no reference to a seizure under Section 3453. Obviously the decisions cited are without application to the instant case. That, where not otherwise provided by law, property declared forfeited by statute may be proceeded against regardless of any criminal prosecution which may have been instituted against the person charged with its illegal use, is settled by the decision of this Court in *Various Items of Personal Property et al.* v. *United States*, 282 U. S. 577.

Respondent's contention, made in the court below, that, acting under a search warrant issued under Section 25 of the National Prohibition Act, the officers seized property not described in the warrant and in excess of the authority conferred upon them by that Act, is without foundation. The record shows (R. 31) that before any seizure was made the officer having a warrant in his possession observed the proprietor of the place selling liquor for beverage purposes and placed him under arrest. As the liquor was obviously tax-unpaid, the officer was justified in seizing any property declared by Section 3453 to be subject to forfeiture and needed no warrant to authorize such seizure. *Vachina* v. *United States*, 283 Fed. 35, 36 (C. C. A. 9th); *Fryar* v. *United States*, 3 F. (2d) 593 (C. C. A. 6th); *Billingsley* v. *United States*, 16 F. (2d) 754, 756 (C. C. A. 8th); *Lee Kwong Nam* v. *United States*, 20 F. (2d) 470 (C. C. A. 2d).

CONCLUSION

The decree of the Circuit Court of Appeals should be reversed and that of the District Court affirmed.

Respectfully submitted.

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OCTOBER, 1931.

APPENDIX

STATUTES INVOLVED

Sec. 48 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 240, is in part as follows:

> *And be it further enacted,* That all goods, wares, merchandise, articles or objects on which duties are imposed by the provisions of law, which shall be found in the possession or custody, or within the control, of any person or persons, for the purpose of being sold or removed by such person or persons in fraud of the internal revenue laws, or with design to avoid payment of said duties, may be seized by any collector or deputy collector, who shall have reason to believe that the same are possessed, had, or held for the purpose or design aforesaid, and the same shall be forfeited to the United States; and also all articles of raw materials found in the possession of any person or persons intending to manufacture the same for the purpose of being sold by them in fraud of said laws, or with design to evade the payment of said duties, and also all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles on which duties are imposed, as aforesaid, and intended to be used by them in the fraudulent manufacture of such raw materials, shall be found, may also be seized by any collector or deputy collector, as aforesaid; and the same shall be forfeited as aforesaid; and the proceedings

to enforce said forfeiture shall be in the nature of a proceeding in rem in the circuit or district court of the United States for the district where such seizure is made, or in any court of competent jurisdiction.

Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 98, 111, is in part as follows:

That section forty-eight be amended by striking out all after the enactment clause and inserting the following: That all goods, wares, merchandise, articles, or objects, on which taxes are imposed by the provisions of law, which shall be found in the possession, or custody, or within the control of any person nor persons, for the purpose of being sold or removed by such person or persons in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the commissioner of internal revenue for that purpose, and the same shall be forfeited to the United States; and also all raw materials found in the possession of any person or persons intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulent[ly] selling such manufactured articles or with design to evade the payment of said tax; and also all tools, implements, instruments, and personal property whatsoever, in the place or building or within any yard or enclosure where such articles or such raw materials shall be found, may also be seized by any collector or deputy collector, as aforesaid, and the same shall be forfeited as aforesaid; and the proceedings to enforce said forfeiture shall be in the nature of a proceeding in rem

in the circuit or district court of the United States for the district where such seizure is made, or in any other court of competent jurisdiction.

Section 3453 of the Revised Statutes (U. S. C., Title 26, Sec. 1185) provides as follows:

> All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made.

Section 22, Title II, National Prohibition Act, c. 85, 41 Stat. 305, 314, 315 (U. S. C., Title 27, Sec. 34), provides:

An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discre-

[illegible] owner, [illegible] shall give [illegible] approved by [illegible] the penal [illegible] $500 [illegible] United States, and [illegible] eating liquor will not [illegible] tured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violation of this title upon said property.

Section 25 of the same Title (U. S. C., Title 27, Sec. 39) provides:

> It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property as is seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was not unlawfully held or possessed, or had not been unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor, shall be destroyed [illegible] shall otherwise order. [illegible] shall issue a search warrant [illegible] caused as such [illegible] unlawful sale of [illegible] laws of [illegible] peace, such as a [illegible] hotel, or [illegible]

vate dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.